

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2007-401-E - ORDER NO. 2008-609  
SEPTEMBER 3, 2008

IN RE: Application of Beatrice Wallenstein (a/k/a        ) FINAL ORDER OF  
Beatrice Weaver) for Change in Electric        ) DISMISSAL  
Service Provider        )

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the application of Beatrice Wallenstein (“Petitioner”) seeking authority for a change in her electric service provider from Progress Energy Carolinas, Inc. (“Progress”) to Marlboro Electric Cooperative, Inc. (“MEC”). For the reasons detailed herein, we dismiss this matter with prejudice.

The Petitioner commenced this case on November 19, 2007. The initial application stated Petitioner’s desire to change electric service providers from Progress to MEC based upon Progress’s alleged service problems and failure to comply with the terms of the settlement agreement entered into as resolution of a longstanding previous dispute between Petitioner and Progress, which had been litigated both in the Dillon County Court of Common Pleas and before this Commission<sup>1</sup>.

The Petitioner submitted no pre-filed testimony in this docket, but her husband Gary Weaver (“Mr. Weaver”) did submit direct and rebuttal pre-filed testimony. Petitioner also filed a motion seeking permission for Mr. Weaver to join or intervene in

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<sup>1</sup> These cases are styled *Petition of Progress Energy Carolinas, Inc. to Terminate Service*, PSC Docket No. 2004-219-E, and *Progress Energy Carolinas, Inc. v. Weaver*, Common Pleas Case No. 2004-17-232. Both cases have been concluded.

this docket as a party. Progress opposed the petition for joinder or intervention and moved that Mr. Weaver's pre-filed testimony be stricken on the grounds that his pre-filed testimony repeated allegations already disposed of in Docket No. 2004-219-E. Furthermore, Petitioner and Mr. Weaver had indicated in prior filings with the Commission that they lived separate and apart from one another during a substantial portion of the time period covered by Mr. Weaver's testimony, and due to their estrangement, Progress argued that Mr. Weaver could not have testified based upon his personal knowledge as to Progress's quality of service after he left Petitioner's residence in 2002. In our Directive dated May 28, 2008, we denied Petitioner's motion seeking joinder and intervention by Mr. Weaver and granted Progress's motion to strike his testimony, finding that the stricken testimony repeated allegations already disposed of in Docket No. 2004-219-E and/or was comprised of hearsay.

On July 25, 2008, Progress filed a motion to postpone the hearing in this docket, which was scheduled to take place Tuesday, August 5, 2008, at 2:30 p.m. Progress's motion was based upon the Petitioner's failure to submit pre-filed testimony as required under Commission rules, and the resulting prejudice to Progress from its not having been afforded the opportunity to prepare for the hearing using the Petitioner's pre-filed testimony. Progress requested that the Commission postpone the hearing, contact the Petitioner and ask whether she still desired a hearing, and if so, establish a new schedule for pre-filing testimony and a new hearing date.

On July 28, 2008, MEC proposed that the scheduled hearing go forward on August 5, 2008, and that the Petitioner be permitted to adopt the proffered testimony of

Gary Weaver in lieu of her own pre-filed testimony. MEC apparently proposed this accommodation to the Petitioner in an effort to conclude this matter on schedule for the benefit of all the parties. MEC further represented to us that Progress and the Office of Regulatory Staff (“ORS”) had no objection to this proposal. The Petitioner was served with a copy of MEC’s proposal, but did not immediately respond.

In our Directive dated July 30, 2008, we held that the interests of judicial economy and the interests of the parties in having this matter move forward would be advanced by holding the hearing as scheduled, without further delay. Accordingly, we denied Progress’s motion to postpone the hearing and granted the request of MEC that the hearing go forward on August 5, 2008. While Petitioner’s failure to pre-file testimony of her own was in itself grounds for dismissal of this docket, we offered Petitioner the extraordinary opportunity to adopt portions of Mr. Weaver’s previously-stricken testimony as her own, where such testimony would be logically and appropriately attributable to her, based upon her first-hand knowledge, and where she explicitly expressed her desire to adopt such testimony.

Therefore, Petitioner was required by our Directive of July 30, 2008, to file with the Commission, by the close of business on Friday, August 1, 2008, a document designating by document, page, and line number those portions of Mr. Weaver’s testimony which she wished to adopt as her own, and it was made clear that she would not be permitted to file new testimony above or beyond that testimony previously filed by Mr. Weaver. Progress and MEC would be permitted to make any legally applicable objections to the adopted testimony, either before or in the course of the hearing.

In spite of the Commission's deviation from its normal procedures to accommodate the Petitioner, allowing her to adopt appropriate portions of Mr. Weaver's previously-stricken testimony as her own well after the deadline for submitting pre-filed testimony, the Petitioner failed to file the required designation of testimony to be adopted by the deadline. Accordingly, at the time the hearing convened on August 5, 2008, she was in continued violation of this Commission's rules requiring the filing of pre-filed testimony.

The Commission convened the hearing in Docket No. 2007-401-E as scheduled on August 5, 2008. The Petitioner, who failed to appear at the scheduled hearing, instead faxed to the Commission on August 4, 2008, a written motion to postpone or continue the hearing in this matter<sup>2</sup>. MEC opposed Petitioner's request for postponement and moved to dismiss the case. MEC pointed out that the Notice of Hearing was published on April 15, 2008, that the parties have had ample notice of the hearing date and could plan accordingly, and that the Petitioner has presented no good cause supporting postponement.

MEC further moved to dismiss, based upon Petitioner's failure to pre-file testimony as required by PSC Regulation No. 103-845(C), and upon her failure to appear at the hearing, which subjects the case to dismissal pursuant to PSC Regulation No. 103-844. As discussed above, the Commission had granted the Petitioner the opportunity to

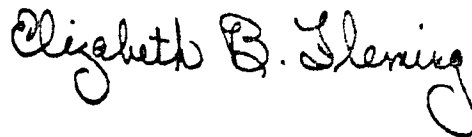
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<sup>2</sup> The Petitioner's attempt to unilaterally impose a continuance upon the Commission by filing an eleventh-hour request for postponement is consistent with her conduct in *Petition of Progress Energy Carolinas, Inc. to Terminate Service*, Docket No. 2004-219-E, in which she requested continuances of scheduled hearings no fewer than five times. In Order No. 2007-298 (May 3, 2007), we denied Petitioner's last request for a continuance and dismissed her counterclaims. Following our denial of her motion for reconsideration, she did not appeal, opting instead to commence this docket, which, at least in part, appears to be an attempt to re-litigate many of the same issues she had raised previously.

cure her failure to pre-file testimony by adopting specific portions of the testimony previously proffered by Mr. Weaver. The Petitioner had failed to avail herself of this opportunity. Because Petitioner had failed to follow the Commission's regulation requiring her to pre-file testimony, failed to attend the hearing, and thereby failed to carry her burden of proof in seeking a change in electric service providers, as set out in S.C. Code Ann. §58-27-660, MEC moved to dismiss the case. Progress and the ORS joined in MEC's motion. For all of the reasons given by MEC and recounted in this Order, we grant the motion as made by MEC and joined by Progress and ORS, and dismiss this matter with prejudice.

This Order shall remain in full force and effect until further order of the Commission.

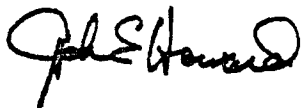
BY ORDER OF THE COMMISSION:



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Elizabeth B. Fleming, Chairman

ATTEST:



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John E. Howard, Vice Chairman

(SEAL)